
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, : Case No. 2:06CV193 TC
Petitioner, :
v. : **REPORT AND RECOMMENDATION**
DAVID L. APOSHIAN, : District Judge Tena Campbell
Respondent. : Magistrate Judge Brooke Wells

The United States of America filed a petition to enforce its November 16, 2005 IRS Summons ("the Summons") pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). Judge Campbell issued an Order to Show Cause on March 9, 2006, which referred this matter to the undersigned under 28 U.S.C. § 636(b)(3). United States v. Jones, 581 F.2d 816, 817 (10th Cir. 1978) (referring IRS summons enforcement to magistrate judge under 28 U.S.C. § 636(b)(3)).

In the Order to Show Cause ("OTSC"), Respondent was directed to file a written response supported by sworn affidavits to the United States' Petition to Enforce the Summons ("the Petition") within ten days of the OTSC being served upon him. The OTSC informed Respondent that only those issues raised in the written response and supported by sworn affidavits would be considered by the Court and that all allegations in the Petition not contested by the written response and sworn statements would be deemed admitted. See United States v. Balanced Fin. Mgmt., Inc., 769 F.2d 1440, 1444 (10th Cir. 1985). The OTSC also directed the undersigned to convene a hearing on May 3, 2006 at 10:00 a.m. to hear any arguments that would assist the undersigned in determining whether Respondent has shown cause. The hearing was convened at the above-indicated time with Respondent appearing pro se and the United States appearing through Jared C. Bennett, Assistant

United States Attorney. Based on the arguments and representations in the Petition and at the hearing, the undersigned reports as follows:

1. Respondent failed to file any written response supported by sworn statements providing reasons why he should not be compelled to comply with the Summons.

Consequently, the undersigned recommends that:

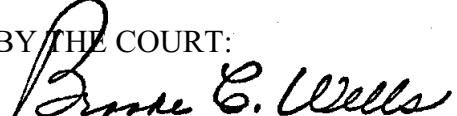
1. The District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summons; and

2. the District Court order Respondent to provide the IRS with the information required by the Summons within 20 days after service upon Respondent of the District Court's order adopting this Report and Recommendation. The IRS offices are located at 50 South 200 East, Salt Lake City, Utah 84111.

Within 10 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within 10 days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the District Judge to whom this case is assigned shall make a de novo determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or re-commit the matter to the magistrate judge with instructions.

DATED this 4th day of May 2006.

BY THE COURT:



BROOKE WELLS, Magistrate Judge
United States District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing Report and Recommendation was mailed, postage prepaid, this 3d day of May, 2006 to the following:

David L. Aposhian
P.O. Box 27651
Salt Lake City, UT 84127

A handwritten signature in blue ink, appearing to read "DAVID L. APOSHTAN".